

APPELATE
COURT WORK

By Chief Justice Frear the Supreme Court has rendered an opinion overruling the defendant's exceptions in each of two cases brought by James L. Holt, Tax Assessor and Collector, against Wong Kwai and John P. Colburn respectively. M. F. Prosser, Deputy Attorney General, appeared for plaintiff, and C. W. Ashford for defendant.

"A single cause of action," the syllabus declares, "cannot be split for the purpose of bringing separate actions on the different parts; but income and property taxes, though for the same year, are distinct causes of action and judgment, for one does not bar an action for the other."

In the Wong Kwai case the collector brought an action for the income tax assessed against the defendant in 1901 and shortly afterward an action for the property taxes assessed in 1901 and 1902. After judgment was rendered in the first action a plea in bar was made orally to the second one, on the theory that there was but one cause of action, which could not be split except with the result of waiving what was not included in the first action. The plea was overruled, and on appeal of both cases to the Circuit Court, jury waived, a similar plea in writing was overruled. Judgments were entered for plaintiff for \$1990.50 in the first, and \$588.45 in the second case. In the Colburn case the first action was for the income taxes for 1901 and 1902, and the judgments were for \$140.18 and \$992.21 respectively, the other facts being similar to those in the Wong Kwai case. The court gives its reasons as follows for its decision:

"There can be no doubt of the rule of law relied on in support of the plea in bar, to the effect that, in order to avoid vexatious and oppressive litigation, a single cause of action cannot be split for the purpose of bringing separate actions upon the different parts; and in *Lewers & Cooke vs. Redhouse*, 14 Haw. 290, and *Phillips vs. Luan Chong*, 1d. 295, this court went so far as to hold that a running book account, though covering many different items incurred at different dates would ordinarily, but not always, be considered as constituting a single cause of action within the application of this rule. It is clear, however, that income taxes and property taxes, though for the same year, constitute distinct causes of action and may be sued for separately. There is no connection between them. They are distinct kinds of taxes, assessed under different statutes at different times in the year and for different periods of time. It is not sufficient that the plaintiff and defendant happen to be the same in both actions, or that both causes might have been joined in one action. The causes of action are distinct and that is the crucial point."

HEARINGS YESTERDAY.
Yesterday morning the Supreme Court denied the motion of Deputy Attorney General Milverton, for the Territory, to admit the deposition of H. Clay Kellogg in the water right controversy of Palolo Land & Improvement Company, Ltd., vs. Territory of Hawaii, Kaane Kaumaka and others. Castle & Withington represented the plaintiff. When the court issued the commission to some one in California to take the deposition of Mr. Kellogg, as an expert who had visited the location of the water in question, the question of the admissibility of his testimony was still pending. The ruling just made shuts it out.

J. K. Farley, Assessor, vs. H. M. von Holt, an appeal from the Tax Appeal Court of Kauai, was argued and submitted. C. W. Ashford and D. L. Withington both argued for the plaintiff, D. K. Baker, and M. F. Prosser, Deputy Attorney General, for A. M. Brown and others, defendants. It was on plaintiff's appeal from Judge Matthewman's granting of a motion to set aside a verdict of \$3002 for plaintiff. After finding the total amount of damages the jury in its verdict proceeded to itemize it against the respective defendants—the bulk being debited to High Sheriff Brown, then so much to Sheriff L. A. Andrews, the late Superintendent of Education A. T. Atkinson and so on down to a policeman, the cause of damages being the forcible eviction of the Baker family from the premises.

Deputy Attorney General Milverton and Carl S. Smith, for the respective parties, agreed in open court to submit on briefs the murder case of Territory vs. Keizo, exceptions from the Hilo Circuit Court.

E. N. Holmes vs. J. G. Serrao was submitted on briefs by Carl S. Smith for plaintiff and W. S. Wise and R. W. Breckons for defendant, the latter having taken exceptions from Hilo.

TODAY'S PROGRAM.
Today the court has set down for hearing the Palolo water case, the cross appeals in the Honolulu Rapid Transit & Land Company's income tax case and Maake Sugar Company's tax appeal.

LIKELIKE COLLIDES WITH DOCK.

The inter-island steamer Likelike, which was en route to Oahu, yesterday morning, smashing through one of the big stringers and splintering some of the planking. Incidentally she narrowly missed doing serious damage to the tug Fearless, which was lying at the dock, being swung around in time to avoid hitting the tug fairly, but giving her a glancing blow in passing that put a deep dent into the iron guard band at her stern.

The accident occurred as a result of a mistake in the signals in the engine-room, full speed ahead being answered instead of full speed astern. Out of it the Likelike escaped without a scratch, something surprising when the gash she made in the dock is considered. The repairs to the Fearless will cost somewhere in the neighborhood of a couple of hundred dollars, the guard band having to be removed and sent to the iron works to be straightened out.

MUTINY IS
SUPPRESSED

The Board of Education held its regular meeting yesterday afternoon at 3:30 o'clock in the office of Superintendent Babbitt, who presided. Others in attendance were Commissioners Mrs. J. M. Dowsett, C. L. Wight, David Al and W. R. Farrington.

Leave of absence for two months was granted Principal Taggard, of the Kaili-ha-waena school. Mr. Taggard's health is bad and he will visit Kona to recuperate. In his absence Mrs. Taggard will be advanced to the acting principalship.

The principalship of the Laupahoehoe school was not filled, as Mr. Swain, who recently resigned that position, may be induced to return to the school again.

Inspector King advised the board that he had closed the Kamaoa school on account of lack of attendance, only eight scholars being enrolled.

Mr. Irish, School Agent for Kau, has resigned and his place is to be filled by Mr. Eaton, who was endorsed by Inspector King.

The Superintendent announced that Miss Allie Felker, the able principal of Kaahumanu school, Honolulu, had succumbed to nervous prostration and for a week past has been confined in the hospital. A long leave of absence was asked for Miss Felker. The board granted the leave of absence, and Mrs. Creighton, one of the teachers at Kaahumanu, will be the acting principal.

Announcement was made that Rev. Mr. Mackintosh had recuperated from his recent illness to such an extent that he might be able to teach again in the near future.

Work has been started on the Kaili-ha-waena school building.

The charges preferred against Teacher Plunkett, of the Nahuiku, Maui, school, were discussed. These involved drunkenness and immoral conduct. The Inspector of the district reported to the board that he had investigated the drunkenness charges and found them to be true. He had therefore suspended Plunkett on October 8, his pay also stopping at that time. The Board of Education sustained the Inspector's action. If Mr. Plunkett desires to make an explanation to the board he will be privileged to do so, although it is likely that he will be dismissed from the service.

Mrs. Mesick of the Kapaa, Kauai, school wrote the board concerning the water supplied the school, stating that it had its source in rather doubtful surroundings, where cattle drank of it. The water then ran through taro patches before reaching the school. At times there was no water. She asked for a water tank, which will be furnished her. She asked permission to open a night school and was granted the privilege.

Leave of absence for a brief period was granted Mrs. William K. Anahu, of the Kalahele, Molokai, school.

Miss Bertha Ben Taylor, principal of the Waialua, Kau, school wrote from Virginia asking that her leave of absence be extended for a few days longer than originally granted. She expects to leave San Francisco on November 3 for Honolulu and will take the Mauna Loa for Kau the day of arrival here.

In the case of the Japanese girl at Waikamau, Hawaii, wherein the parents desired to have her transferred to another public school, so that after hours she could attend a Japanese school at Hakalau, the board decided that the young lady could have her release from her present school. The Superintendent stated that under similar circumstances releases of a like character are granted in Honolulu frequently. Some objection from Hawaii had been made to the desired release.

The mention of this Japanese school caused Mr. Farrington to ask whether all the private schools in the Territory had conformed to the law; that is, had they made application to the Department of Public Instruction to open such schools, as laid down by the law. Superintendent Babbitt said he knew of none that had. He read that portion of the law relating to private schools. There was some question as to whether or not these schools be notified that they violated the law. Just what final action will be taken has not been decided, although in future proposed private schools will be required to observe the letter of the law.

A question of the relations between Miss Bond, principal of Makapala, Hawaii, school, and Mrs. McKenzie, a teacher, was discussed. It was shown by letters that Miss Bond, a Smith College graduate, desired Mrs. McKenzie to instruct the girls in the art of weaving. The request was not complied with by Mrs. McKenzie and the matter was taken up with the department headquarters. The board yesterday sustained Miss Bond's position in the premises. It was stated that there was an opportunity to set an example of obedience to the authority of principals, to be shown, not alone in the Makapala school, but for the benefit of all schools in the Territory. The board members were all agreed that any show of insubordination among teachers toward principals must be dealt with efficiently, otherwise the influence of principals would cease.

ROSECRANS BRINGS OIL.

The oil steamer Rosecrans, towing the oil barge Monterey, arrived from Monterey yesterday at noon, eleven and a half days out. The Rosecrans is docked at the railroad wharf and the Monterey is at anchor outside, awaiting the Fearless, which will tow her in this morning. The total cargoes of the two vessels is nearly 40,000 barrels.

It is expected that this will all be discharged in time to enable the two vessels to get away on their return tomorrow afternoon.

FRASER TELLS ABOUT
LIFE IN THE AZORES

First the "Governor's San Francisco Relief Committee," and next the Board of Immigration, got hold of a good man when they begged E. A. Fraser off, for a while, from his duties at the Crockett sugar refinery. As is generally known, Mr. Fraser went on the labor immigration mission to Europe with E. R. Stackable, collector of customs here.

Not much was heard from either Mr. Stackable or Mr. Fraser until they had done things, and then not very much in words though a great deal in accomplished fact, the latest official news from the first agent being a cablegram announcing the sailing of the steamship Suveric from Funchal, capital of Madeira Island, with 1225 emigrants for Hawaii.

Mr. Fraser, however, found time to write a most interesting letter to U. S. Judge Dole, which the recipient kindly places at the disposal of the public through the Advertiser. It is given below in full excepting a short personal message at the end. Mr. Fraser's description of life in the Azores, from whose capital he writes, is exceedingly graphic with some delicious touches of humor. He expresses a favorable opinion of the people coming out here, and he ought to be a good judge from his long intimacy, while manager of the Hawaii Railroad Co., with sugar plantation conditions and requirements.

MR. FRASER'S LETTER.
Ponta Delgada, Azores, Aug. 30, 1906.
Judge S. B. Dole, Honolulu, H. T.

Dear Mr. Dole: Mrs. Fraser and I have been spending the past two months among these attractive islands on recruiting business for your Board of Immigration, and we find the experience of a very delightful nature. The climate, and many of the surroundings, are similar to Hawaii, and this town of Ponta Delgada is much as I imagine Honolulu was twenty years ago. Conditions in the outlying districts are of the most primitive nature possible, all excepting the roads, which are well laid out, well made and well kept. I brought an automobile with me, a good, serviceable sixteen horse-power car, and we have covered many hundreds of miles with great satisfaction. You might tell your nephew that it is a Duray.

The recruiting of laborers goes on satisfactorily, and we have every hope of success. We rather expect to make our first shipment about a month hence, taking from both here and Madeira. I go to the latter island tomorrow for two weeks, and will probably return by way of Lisbon. It would seem as though these people would supply a proper class of immigrants; they appear strong, healthy and good-natured; their wants are easily supplied and they are thrifty.

The country rather runs to churches and military, and the various feast processions and military parades constitute about the only life and diversion there is. Last Sunday was election day, the voting being carried on in the churches according to the register supplied by the priests. There was considerable excitement, and the Government party, which won, had a big celebration in the evening. The usual cries of fraud went up and everything seemed quite homelike.

The donkey is the general utility animal, although oxen are sometimes employed, and you would scarcely believe some of the primitive conditions under which the farmer, or peasant, lives. Oxen thresh the wheat by treading it out on a stone floor; wine is pressed out by bare feet in a trough; the carts are all wood, the disc wheels turning with the axes, and, as no grease is used, the noise is surprising. This screaming is much desired, however, as it keeps the oxen in good health and keeps the witches away. Our hotel, the only possible one in the town, dates back to 1724 and it acts the part. We have breakfast at 9:30, dinner at 2:30 and supper at 8:30. Our bath, called bath, because this is an English hotel, is brought to us in a round pan at 8:30 in the morning, and if you arise before that time you are little better than a servant.

Construction is all of stone, roofs are of red tile and all decoration is in various tints of whitewash. Streets are about twelve feet wide, well paved with stone, and the houses front directly on them, with barred windows and a narrow balcony above. All garden, of whatever nature, is in the seclusion of the rear. There are wider streets, of course, and, as before said, the roads are excellent; much better, on the whole, than those of Hawaii. The stone pavements, too, leave little to be desired, although drainage and sewerage is abominable. Sincerely yours,
E. A. FRASER.

JAPS TOO GOT LARGE DAMAGES

Country school teachers do not tread a path of roses and sometimes their ideas of patriotism are somewhat jarred, as the following letter from a teacher on Hawaii indicates:

Hakalau, October 11, 1906.
Mr. W. H. Babbitt, Superintendent of Public Instruction, Honolulu.

Dear Sir: Finding myself again in a very peculiar position, I deem it right that the matter be brought to your attention.

Every year in November the Japanese celebrate the anniversary of their Emperor, and though living on American soil (Hawaii) they defy the laws of the country by keeping all the children away from school for two or three days without even saying "Excuse me."

Not satisfied with their November holidays, they again defy the laws by flocking into Hilo this week to see their glorious ship Angawa. Over twenty of my Japanese children are in Hilo since Monday and it is hard to tell when they will return. Only two came and asked to be excused, while the rest took "French leave."

To me this is very aggravating, because, after all my teaching of patriotism and respect to our flag, they show their patriotism by absenting themselves from school to celebrate any old Japanese holiday or event.

I know that all the schools along the line are in the same position, but I sincerely hope that you will do something to remedy such matters in the future. Respectfully yours,
E. S. CAPELLAS.

BURGLAR CAPTURED BUT NOT BY POLICE

That Ah Chin, a Chinaman, arrested yesterday morning, is being held for burglary instead of murder is not his fault, for when captured he was busy throttling Tugi Mekitchi and had his victim almost at the point of death when clubbed off. Mekitchi is the proprietor of an ice cream stand adjoining the Greater New York saloon, on Liliha street, and detected Ah Chin attempting to effect an entrance into his place yesterday morning shortly before 5 o'clock. He grappled the burglar and in the fight that followed was getting decidedly the worst of it, the Chinaman getting his fingers locked on his throat.

Just at this time Manuel Spencer, a prison guard, and E. A. Mikelani, attracted by the noise of the scuffle, came up and dragged Ah Chin away, keeping him until the arrival of the police. Mekitchi's throat was badly torn by the Chinaman and it was some little time before he was brought to and able to give an account of the affair.

When searched at the police station a complete burglar's outfit was found upon Ah Chin, including a steel jimmy, a screwdriver, two pairs of scissors and a pair of wire pliers.

The prisoner was brought up for a preliminary hearing yesterday morning before Judge Whitney, and, having waived trial, was committed for the Circuit Court.

Ah Chin was the Chinaman arrested some short time ago on suspicion of having robbed one of the customers at the fishmarket of \$100, taking the bag containing the money off the counter of one of the stalls during the temporary absence of the owner. At that time he was discharged, no available evidence against him being procurable.

Registration returns have been received at the Secretary's office from the First District, Island of Hawaii. They show a great increase in the Hawaiian registration and a slight decrease in others. The increase of Hawaiians is from 1032 in 1902 and 1087 in 1904 to 1903 this year. In 1902 there were 514 of other races. In 1904 there were 526, and this year there are 460, of whom 273 are, classed as of American birth and 188 as of Portuguese birth.

An interlocutory decision was given by U. S. Judge Dole yesterday on the exception to libel for salvage in the admiralty suit of Commercial Pacific Cable Co. vs. Steamship Manchuria. It was found that libelant, as charterer of the steamship Restorer, had not alleged an interest in the latter sufficient to justify its claim of right to bring suit. The exception was allowed with leave to libelant to amend its libel within ten days. The syllabus states the law thus:

"In a libel for salvage by the charterer of the vessel used in the salvage services, an interest of libelant in such vessel justifying his claim of right to bring suit is a material fact and should be alleged."

Following is a portion of the court's decision:

"The libel begins with the following words: 'The libel and complaint of the Commercial Pacific Cable Company, a corporation organized and existing under and by virtue of the laws of the State of New York and doing business within the Territory of Hawaii, the charterer of the cable steamship Restorer, whereof Basil C. Combe is master, which libel is brought on behalf of itself and of the master, officers and crew of said C. S. Restorer, against the steamship Manchuria,' etc. Article second of the libel, begins as follows: 'That on Monday, the 20th day of August, A. D. 1906, the said cable steamship Restorer, being of the tonnage of 3180 tons gross, and 1284 tons net register, whereof the said Commercial Pacific Cable Company was and still is the charterer,' etc."

"The libel filed its exception to the libel on the ground that it does not appear in and from the allegations of said libel that said libelant has sufficient interest in and to the cable ship Restorer mentioned in said libel to entitle it to maintain said libel against the said steamship Manchuria."

"The authorities recognize a distinction in charters to the effect that where by the terms of the charter-party the entire vessel is let to the charterer with a transfer to him of its command and possession and consequent control over its navigation, he will generally be considered as owner for the voyage or service stipulated. But, on the other hand, if the charter-party let only the use of the vessel, the owner at the same time retaining its command and possession, and control over its navigation, the charterer is regarded as a mere contractor for a designated service, and the duties and responsibilities of the owner are not changed. In the first case the charter-party is a contract for the lease of the vessel; in the other it is a contract for a special service to be rendered by the owner of the vessel."—Leary vs. United States, 81 U. S. 607, 610; Gracie vs. Palmer, 21 U. S. 605; Reed vs. United States, 73 U. S. 591, 601.

"Under the allegations of this libel there is no averment that the libelant holds the vessel under a charter which gives it such control of the vessel and so renders it responsible for its full management and its navigation—furnishing supplies and providing a crew—as would show that it is in full control thereof as owner for the time being. It therefore does not appear that the libelant has a legal right to salvage from the allegations of salvage services set forth."

"Counsel for the libelant claims that this point is sufficiently covered by the allegations of article 14 of the libel, which avers 'that libelant by reason of the services rendered as aforesaid deserves and is justly entitled to meet and competent salvage.' I do not think that this is a sufficient averment of ownership for the time being as is required by the rules of pleading.—Adm. Rule 25. It is simply an averment that under the allegations of the libel it is justly entitled to salvage, which is a proposition of law."

A citation is made by Judge Dole of "The Cherokee" case, in which the ownership of the tug Monarch, stated in the libel heading, was omitted from the allegations, and it was held:

"The ownership of the tug is a material fact, and it may become of essential importance in the protection of the respondent in obeying the decree of the court in this case. It should therefore be alleged in a distinct article (Rule 23d, Adm.), so that respondent may traverse it, if he be so advised, or at least may require proof of it. Even if this has not been adopted as the universal rule, it is better

Editor Advertiser: The article reproduced by yesterday's Advertiser exposing the reasons why A Liberdade stopped being a Catholic organ is calculated to give its readers, unacquainted with facts, an erroneous idea of the cause of that paper's financial decline. One is inclined to infer from the contents of that article that the financial downfall of A Liberdade dates from the moment its management fell into the hands of Father James C. Bessel and became a Catholic organ, and consequently the conclusion to be inferred is that its low financial condition is to be ascribed to the inadequate management on the part of the mission and to the abhorrence on the part of the Portuguese people, who are otherwise considered very religious, to anything in the line of religious literature.

To impute to these motives the precarious condition of A Liberdade is most decidedly incorrect, for in the first

MANCHURIA
WINS POINTS

Attorney General Peters will be asked by the Board of Education to pass upon a question of payment asked by a Government physician for services rendered to government wards in excess of their regular stated salaries.

The matter was brought to a head yesterday at a meeting of the Board of Education, Mr. Farrington referring to a case of illness of a boy at Lahaina, shown on Principal McDonald's general report. He stated there was no doctor in attendance upon the patient.

Superintendent Babbitt then made a statement of the relation of the government physician at Lahaina—Dr. Moloney—to the Lahaina school. He said the government physician opposes the idea that he is to treat the scholars free of charge, but claims the right to make a charge. In substantiation of this claim he had entered a charge item against the school, or the government, for treatment of a boy. The auditor held this up and refused to pay, saying that he could not make a payment for services included in the government physician's monthly salary. Mr. Babbitt felt that the physician, under the circumstances, was somewhat in the right, according to the letter of the law, but nevertheless it left the boys at Lahaina doctorless. Principal McDonald had stated to the superintendent that he felt considerable responsibility under such circumstances, as unless the boy was very ill he did not feel that he could call in a physician. On one side, he was confronted with the fact that the auditor would honor no bills incurred, and on the other hand he would have to dig down in his own pockets for any call made upon a physician.

The salary of the government physician there is quite small—\$25 per month. In the case of the Reform School at Waialea, a physician outside the government physician had at one time been called in, and the bill had been allowed by the government. It was understood, however, that the inmates at Waialea are considered wards of the government, placed there by compulsion.

At the suggestion of Mr. Wight the board decided to permit the Attorney General to pass upon the matter.

SUPPLY SHIP FOR CABLE COMPANY.

A steam schooner is being built on the coast for the Commercial Pacific Cable Company, to be stationed at Honolulu, for the carrying of supplies between this place and the cable company's landings at Guam and Midway, thus leaving the cableship Restorer free for repair work and cable-laying. The vessel is to be commissioned early next year and will fly the American flag, thus doing away with any necessity of the Restorer having to carry supplies and giving cause for the question raised recently concerning the carrying of such supplies between American ports by a British steamer.

In regard to the recent trips of the Restorer to Midway with wrecking gear and supplies for the Mongolia, ashore there at that time, the United States Treasury Department gave a ruling that the coasting laws did not apply to Guam and Midway, but in case of a further decision reversing this ruling the cable company will be prepared to meet it.

A RELIABLE REMEDY.

The only remedy which can always be depended upon in the most severe cases of pain in the stomach, cramp colic or diarrhoea, is Chamberlain's Colic, Cholera and Diarrhoea Remedy. Most dealers know this and recommend it when such a medicine is called for. For sale by Benson, Smith & Co., Ltd., agents for Hawaii.

Oahu Sugar Co.'s directors will consult the shareholders about the proposition to change the par value of the company's shares of capital stock from \$100 to \$20 each, by issuing 130,000 shares in place of the present 36,000 shares. For this purpose a meeting of the stockholders is called for Friday, the 26th inst., at 2 p. m., in the Hackfeld building, at which other business may be considered.

"I am disposed," Judge Dole concludes, "to adopt the rule set forth in the above case and allow the exception. The libelant has leave to amend its libel and is allowed ten days in which to do so."

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WHY A LIBERDADE CEASED
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To impute to these motives the precarious condition of A Liberdade is most decidedly incorrect, for in the first place, the mission never assumed the direct management of the paper. The only influence it exercised over it was as a mere stockholder holding a majority of shares.

Secondly, if the new policy of A Liberdade incurred the displeasure of some of its readers it was of a very few, and their number was greatly offset by those that, through the influence of the priests throughout the islands, became subscribers to it.

That the financial decline of A Liberdade does not date from the time it became a Catholic organ is obvious from the statement made by the writer himself, viz.: "Father James C. Bessel and Father Stephen saved the company from a financial crisis." This was the second time the mission extended its assisting hand to the sinking A Liberdade and put it afloat. The third time it was sinking again deeply into debt, again it cried out to the mission for help, offering to sell the eight remaining shares; but this time Bishop Libert thought the mission had already rendered sufficient aid and that it was not going to support a newspaper that was a continual source of expense. FATHER STEPHEN.

UP TO THE
ATTY-GEN'L

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